

<b>Interview Summary</b>	Application No. 09/648,429	Applicant(s) LOUVIERE ET AL.	
	Examiner Prieto B	Art Unit 2142	

All participants (applicant, applicant's representative, PTO personnel):

(1) Prieto B (Examiner).

(3) Philips, Hikaru (Inventor).

(2) Gantz, B. (Reg. No. 34,170).

(4) Bennet, Jason (Inventor).

Date of Interview: 12 July 2004.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: claims 51 and 78.

Identification of prior art discussed: HERTZ et. al. (US 6,460,036).

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

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Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Betty P. Nichols 6/12/04  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

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Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant requested telephonic interview and faxed required agenda (see attached). Applicant requested the presence of a primary/supervisory examiner, although one was made available and scheduled, a latter re-scheduling of time could not be accommodated by the primary examiner. Examiner in charge agreed to grant requested interview. As introduction, Inventors discussed the field of invention (choice modeling) of instant application and their work in this area. First issue presented on the agenda was discussed, however a main point of contention was the definition of the claimed term "treatment". Applicant contends the definition of the term should be read from the specification in its entire precise form (i.e. the combination and/or forming of content content structure or treatment (page 9, lines 1-2) and not in the broadest reasonable interpretation in light of the specification in accordance to MPEP 2111. Thereby, the Hertz reference does not teach claimed treatments nor performs claimed experiment, according to applicant. Examiner considered raised issued, however disagreed as to the interpretation of the terms "treatment" and "experiment or experimentation" indicating the terms have been read in light of the specification without reading limitations of the specification into a claim, to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim. Examiner has applied the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art. However, examiner and applicant further disagreed as to what is one "ordinary" skilled in the art. Applicant directed examiner to claim 51 indicated that this claims a "systematic experiment", examiner considered and review this interpretation, however noted that what is claimed in claim 51 is a system (called "online experimentation") configured with an intended purpose/functionality. Further, the term experiment or experimentation has also been read in light of the specification and explained in detail on the latest office action (page 10). Applicant directed examiner to claim 78 raising similar argument, however examiner indicated that this is also a claim directed to a system in which further treatment comprises a set of content elements. Applicant directed examiner's attention to claim 54, describing a method comprising the creation of various treatments for a set of content elements, however the disagreement as to the interpretation of the term "treatment" still remains unsolved. Examiner indicated that reading limitations of the specification into the claims would require precise and explicit recording of the interpretation of claimed terms by the examiner, which when carried forward in a reason for allowance, NOT indicating that claims as they stand are allowable, but as a consequence, such interpretation would further place unwarranted interpretation (narrowing) upon the claims (see MPEP 1302.14). However, applicant indicated he would have no objection to this and in fact would be willing to introduce term definitions into the claims if this would accelerate prosecution. Refocusing on the inventive concept, examiner indicated that the invention seems to be directed testing the effectiveness of how the content is arranged and presented to the user, specifically, where given specific content element(s), what is tested is the user behavioral aspects to the possible variations in presentation (fixed or moving banners) such as possible combinations (i.e. permutations) can be presented/viewed for measuring user behavior, e.g. variations in color, placement, the effect of each element for all possible combination of the same content is what is observed, the permutations (forms of presenting) exponentially increase the possible combinations that are set-up for testing, producing a factorial experiment where behavioral aspects of user's choices are collected, used for modeling and prediction etc. Despite the above disagreements, both parties agreed on focusing on this aspect and amending the claims to at least closer reflect it. Applicant raised a further issue not presented on the agenda but submitted to office (but not yet officially received/considered by examiner) regarding the rejections under 102(e) based on literature references Dreze and Svenson. Examiner indicated issues and case laws regarding claim interpretation set forth by applicant will be considered, and that non-patent literature based rejections will be fully considered upon receipt of response after-final submitted by applicant. Examiner agreed on making recommendation pointing to aspect and/or subject matter that would accelerate prosecution and applicant agreed to consider introducing discussed claimed definitions to the claim and consider examiner's recommendation when amending the claims to clearer reflect inventive concept.

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